

**Response to Comments made by EPA, received August 11, 2020 on the 20-CP General Discharge Permit for Discharged Associated with Construction Activity.**

**Fact Sheet** – MDE reviewed minor edits proposed by EPA and accepted them. Substantive comments were included requiring responses and MDE responses are included below:

**Comment 1** – On the cover page there was a comment on the language related to public notice and process for issuing the permit. The language “An interest list will also be established for those interested in online opportunities”. EPA asks **“Doesn’t MDE already have this list from prior issuance of this permit?”**

**Response 1** – The situation we are operating in related to COVID restrictions and a move to providing more access to hearings through on-line virtual hearings is new. Establishing a process for register interest in a specific permit to include email addresses is new, and thus the language is accurate. **No Change.**

**Comment 2** – Regarding the background (I.A.3.c) a reference to the Department’s EPA ID for the permit “MDRC0000” caused a question. **“Confusing – isn’t this permit number 20-CP?”**

**Response 2** – Each permit issued by Maryland has both an NPDES number which start with “MD”, and a state number. For this permit the NPDES number is “MDRC0000”, and the State Number is “20CP0000”. This is a long standing practice, and the logic in the state numbers is meant to contain some hint as to the permit. This permit “CP” means construction permit. To address the question, we provided a sentence to explain the relationship between NPDES and State Permit number.

**Comment 3** – Under the Background Summary of Significant Changes to the Permit (I.B.2) “Types of Discharges Authorized” the EPA asks: **“Is there an acreage minimum for this type of construction site to be eligible for coverage other than the 1 acre?”**

**Response 3** – This is specified not under changes from the previous permit, but in I.C.3. “I.B.2. The project will disturb one or more acres, or will disturb less than one acre but is part of a common plan of development or sale that will ultimately disturb one or more acres, or the project’s discharges have been designated by the Department as needing a permit under § 122.26(a)(1)(v) or § 122.26(b)(15)(ii).” **No Change.**

**Comment 4** – Under the Background Summary of Significant Changes to the Permit (I.B.3) “Effluent Limitations” the fact sheet “Changes to the organization of this section are substantial, however the content is very similar, and the supporting rationale is discussed later” the EPA asks: **“Please insert appropriate location.”**

**Response 4** – The following was added “later in this Fact Sheet **in Part I.C.16** “Control Measures and Effluent Limitations.””

**Comment 5** – Under the Background Summary of Significant Changes to the Permit (I.B.6) “Geographic Coverage of the Permit” the existing language “This permit clarifies geographic coverage may be provided for discharges from sites located in Maryland.” EPA suggests language “This permit clarifies that permit coverage may be provided for discharges from sites that are geographically located in Maryland.” with the following question **“Is this true even if the site discharges to DC or PA waters? i.e., which one governs – location of the site or location of the discharge?”**

**Response 5** – There was no change in the Geographic Coverage from the 14-GP to the 20-CP. This section of the fact sheet is being removed.

**Comment 6** – Under the Background Summary of Significant Changes to the Permit (I.B.7 which is now I.B.6) “Categories of Facilities That Can Be Covered Under This Permit” concerning “new operators of permitted sites” EPA asks **“Wouldn’t this be achieved by transferring the permit vs obtaining new coverage?”**

**Response 6** – Yes the EPA is correct. An example of a new operator in this context would indeed be through transfer of ownership. The permit provides this clarification “New Operator (i.e. an operator that through transfer of ownership and/or operation replaces the operator of an already permitted construction site that is either a “New site” or an “existing site”).” This clarification is now included in the Fact Sheet in this section as well.

**Comment 7** – Under the Background Summary of Significant Changes to the Permit (I.B.8 which is now I.B.7) “Triggers for SWPPP Requirements” **EPA had proposed adding SWM as a trigger for a SWPPP**, when “there are pollutants beyond those addressed by the E&SC Plan.”

**Response 7** – The permit addresses the construction activities. The SWM addresses the long term post construction stormwater, and thus hadn’t been included as a trigger for a SWPPP. **No Change.**

**Comment 8** – Under the Background Summary of Significant Changes to the Permit (I.B.9 which is now I.B.8) “Sensitive Water (Tier II Waters) and Impairment Triggers for E&SC Requirements” the EPA had asked **which MDE prefers related to “sites that discharge to waters” or “sites within watersheds”, those identified as Tier II.**

**Response 8** – The permit addresses controls for stormwater, which are often uphill/upstream of the actual point of discharge, so the more appropriate wording is as it was written “sites within the watershed” vs EPA’s proposed “sites that discharge to waters”. No Change.

**Comment 9** – Under the Background Summary of Significant Changes to the Permit (I.C.2) “Geographic Coverage”. The EPA commented on the second sentence of this part, which was a comment included to clarify that a business must be registered to do business in Maryland. EPA notes **“This seems to answer some prior questions regarding whether the facility needs to be physically located in Maryland and/or discharge to Maryland waters; this seems to say it has to be both; is that correct? Recommend ensuring that the two sections are consistent in the message to avoid confusion.”**

**Response 9** – The question relates to where discharges are authorized. The other part of the comment relates to the fact that registration in the state is required. The registration question is addressed under what information is required on an NOI, and is not a requirement of this permit, but rather a requirement of state law. This statement is out of place in this part of the fact sheet since this part is about geographic coverage. In order to be granted permit coverage you must be registered to do business in the state. By including this requirement in this section, a construction operator may assume that if they are not registered in the state they don’t need the permit. Quite the opposite is true, you must have permit coverage, and in order to have permit coverage you must be registered in the state. To help clarify the first question, the sentence “This permit authorizes the discharge of pollutants to Waters of This State in accordance with the effluent limitations and conditions set forth herein associated with construction activity.” was added to Part I.C.1. To remove confusion about the other question, the sentence on registration in the state for coverage has been removed.

**Comment 10** – Under the Background Summary of Significant Changes to the Permit (I.C.10) “Authorization Request Requirements”. Table 1 - Deadlines for Permit Coverage specifies certain timeframes. **EPA notes that this table wasn’t consistent with the permit language for emergency related projects.**

**Response 10** – After reviewing both documents, both the permit and fact sheet language were modified to be consistent between both documents.

**Comment 11** – Under the Background Summary of Significant Changes to the Permit (I.C.17.b) “Erosion and Sediment Control Requirements” specific to the requirements for Natural Buffers / Stream Protection Zone the EPA ask that we **“Please explain what is meant by “an average of 100 feet” here. Or provide the graphic (or reference to it) that is in Appendix B.”**

**Response 11** – As suggested by EPA, the graphic was copied from the permit and placed here to help the reader understand the concept.

**Comment 12** – Under the Background Summary of Significant Changes to the Permit (I.C.17.b) “The permittee shall consider State listed rare, threatened, and endangered species and/or their habitat” the EPA requests **“The permit should also include federally listed species”**

**Response 12** – The wording “Federal and” has been inserted so that they are considered in addition to State listed species and habitat, both in the fact sheet and permit.

**Comment 13** – Under the Background Summary of Significant Changes to the Permit (I.C.19) “Site Inspection Requirements” the Factsheet had “conduct their inspection within 24 hours of the beginning/conclusion of a storm event.” EPA had asked **“Which one? Does MDE have a preference? Can it be both? Permit should specify.”**

**Response 13** – The correct wording should be after the rain event, consistent with the previous permit language “The next day after a rainfall event resulting in runoff”. This has been updated in the factsheet and permit.

**Comment 14** – Under the Background Summary of Significant Changes to the Permit (I.C.19) “Reductions in Inspection Frequency”, regarding the trigger for reduced inspection frequency the EPA asks **“Does the permittee determine this themselves? Or does MDE have to verify that the stabilization req’ts have been met to reduce the inspection frequency?”**

**Response 14** – The previous permit and EPA’s CGP have similar conditions. Inspectors simply cannot be at each site to make this straight forward determination. The operator / permittee is the correct person who must make the determination. However, if they make the determination and an inspector is on-site for a site complaint or regular inspection and it is found to be incorrect, this would be a violation of the permit. No Change.

**Comment 15** – Under the Background Summary of Significant Changes to the Permit (I.C.22) “Stormwater Pollution Prevention Plan (SWPPP)” under the section on the Site Map, the EPA **“Recommend including these items as part of the list of what is required on the site map above.”**

**Response 15** – The confusion that created the concern, was based on how the Fact Sheet was formatted. What EPA is commenting on, that the specific items identified should be included in the map is actually what was meant by the text in the Fact Sheet. To address this the format in the Factsheet has been modified in this section to make it clear which items must be included in the map.

**Permit** – MDE reviewed minor edits proposed by EPA and accepted them. Substantive comments were included requiring responses and MDE responses are included below:

**Comment 1** – Under Part II. AUTHORIZATION UNDER THIS PERMIT, the Emergency Authorization requires that the “... NOI is submitted within 7 calendar days after commencing earth-disturbing activities, and must ultimately complete all requirements to obtain regular coverage under the general permit” raised the following question from EPA: **“Please be sure that the FS is consistent with this language.”**

**Response 1** – After reviewing both documents, the permit and fact sheet language were modified to be consistent.

**Comment 2** – Under Part II.A.1 “Authorization Request”, the EPA inserted this highlighted text into this sentence “The NOI must be submitted prior to 60 days before the expiration date of this permit”.

**Response 2** – No Federal Regulation, the EPA CGP or the 14GP require the NOI to be submitted 60 days prior to expiration. Based on this review the proposed insertion isn’t appropriate. No Change.

**Comment 3** – Under Part II.A.2 “Contents of Notice of Intent”, the EPA suggests clarifying that a resident agent (for corporations/LLC) are required if the business referenced as incorporated instead of registered in a state other than Maryland.

**Response 3** – The language was updated to clarify the requirement.

**Comment 4** – Under Part II.A.9 “Table 1- Deadlines for Permit Coverage”, there were several comments. EPA asks **“Still confused as to which sites in this table refers to those that submitted DOIs after 14-GP expired. Are they just considered new sites for purposes of this permit? Could that be explained somewhere?”**

**Response 4** – These are considered to be existing sites, which may file for continuance. To avoid any confusion, the permit language has been updated to make it clear that in the cases where a DOI and NOI were filed, they must apply under the continuance option in the deadline table.

**Comment 5** – Under Part II.A.9 “Table 1- Deadlines for Permit Coverage”, in reference to the deadline to apply for coverage under the new permit, the EPA deleted the phrase **“Authorization to discharge under 14GP continues in the interim”, indicating “Once this new permit becomes effective, 14-GP ceases to exist.”**

**Response 5** – EPA’s CGP has a similar concept. The permit states “Your Official End Date of Permit Coverage Once covered under this permit, your coverage will last until the date that: a. You terminate permit coverage consistent with Part 8; or b. You receive permit coverage under a different NPDES permit or a reissued or replacement version of this permit after expiring on February 16, 2022; or c. You fail to submit an NOI for coverage under a revised or replacement version of this permit before the deadline for existing construction sites where construction activities continue after this permit has expired.” The language gives certainty of what is required for the operator. They must abide by the 14-GP until they are given coverage under the new permit. If they miss the deadline, then their coverage ceases. The language was changed to better clarify what is required and what is meant by coverage.

**Comment 6** – Under Part II.A.9 “Table 1- Deadlines for Permit Coverage”, in reference to the continuation, and whether additional documentation is required EPA comments **“What about if they discharge to a Tier II water? Wouldn’t the permittee be required to fill out and submit the Antidegradation checklist? I can see that no fee or PN would be required but they should have to fill out the checklist if it applies.”**

**Response 6** – If approved prior to our requirement to review the checklist, then their antidegradation review would have been completed using some other means. This doesn’t relieve them of an antidegradation review, just doesn’t require that they fill it out after the fact. No change.

**Comment 7** – Under Part II.A.10 “Failure to Notify” EPA recommends deleting the word **“Individual”** from the permit type, since the facility may be able to operate under another NPDES General Permit as an alternative.

**Response 7** – There currently are no other NPDES permits for construction activity, however as EPA points out this may change in the future. Why limit options? With this deletion it appears that having any general or individual permit may be acceptable, vs a permit specific to this activity. In reviewing the language, and comparing to the similar clause in the EPA CGP, the EPA CGP language was inserted instead. This clarifies that missing a deadline and continuing to operate is a violation and subject to penalties in a more straight forward fashion and address the issue identified by the reviewer.

**Comment 8** – Under Part II.B.2 “Public Notification Period”, there were a series of questions. Regarding the availability of E&SC and SWM through the local approval agency, EPA asks **“Is there a way to include these plans in the NOI system for the public to view? If they have to be requested, that could take up to or even over the 14-day waiting period.”**

**Response 8** – For projects the process starts well before an NOI is initiated. There would be zoning and potentially planning documents, all controlled by that jurisdiction. All the documentation is held at that location. Due to the size of the documents and revision control, those documents are managed by that jurisdiction. Each jurisdiction has different processes, meaning that some may be on-line whereas others may require going in to look at physical copies. Input to E&SC and SWM can be provided directly to the jurisdiction during that process. Since there is no central file system, records must be accessed there. It is not realistic that the thousands of records managed by these jurisdictions are updated within the eNOI system, even if the system had unlimited memory to store them. E&SC and SWM are both heavily regulated, requiring adherence to strict standards to meet the State’s stormwater law. Therefore these are submitted by and approved by stormwater professionals. What is uploaded into the eNOI systems is proof that approval was achieved. As noted in the permit, the notification period isn’t the end of the public’s input. The notification is to allow those interested not to be caught off guard by a project that they were unaware of through the processes already in place by the local jurisdiction.

**Comment 9** – Under Part II.B.2 “Public Notification Period”, the process is laid out with several steps. The EPA asks **“Why does this say “If the plans are available”? Above it appears to indicate that the plans will be made available for public review. Are there instances where the plans may not be available?”**

**Response 9** – For projects where the operator is getting the paperwork underway ahead of time, the E&SC and SWM may not yet be finalized. Thus when the notification period makes the public aware, they can be assured to be involved for the duration of that approval. It is clear through the Department’s process that a registration cannot be approved until the final plans are signed off and proof provided to the Department through the eNOI system.

**Comment 10** – Under Part II.B.2 “Public Notification Period”, the permit allows third parties to identify specific issues with the E&SC plans. EPA asks **“If the plan doesn’t meet the standards, then it wouldn’t be approved, correct?”**

**Response 10** – In a perfect world correct, however this provides a backstop if there were an issue identified. In addition, the permit is built on a system of verification, such as the required training and inspections.

**Comment 11** – Under Part II.B.2 “Public Notification Period”, **EPA provided edits on the exception for single family homes.**

**Response 11** – The edits were accepted.

**Comment 12** – Under Part II.D.1 “Transfer of Authorization”, EPA suggested restructuring the paragraph to clarify the sequence required by the permittee. **“Placing at the start of the sentence to reduce any confusion.” “Added to be consistent with rest of the sentence.”**

**Response 12** – The edits were accepted.

**Comment 13** – Under Part II.D.1 “Transfer of Authorization”, EPA asks **“What about the plans listed below? Shouldn’t copies of those approved plans be provided as well?”**

**Response 13** – The additional documents were spelt out in this section for clarity.

**Comment 14** – Under Part III.A.1 “Control Measure Selection and Design Considerations” refers to “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control. EPA recommends **“checking the FS to determine whether there is an explanation as to the E&S Handbook being titled 2011, but including updates from 2017.”**

**Response 14** – The Maryland regulation refers to “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control.”, which is why we refer to the required specs. The 2017 update still refers to the document as the 2011 handbook. The changes were related to the grading unit, the length of time that Approved erosion and sediment control plans remain valid and how often the appropriate enforcement authority shall inspect sites. No change.

**Comment 15** – Under Part III.A.2 “Erosion and Sediment Controls”, regarding the stream protection zone, EPA suggests **“to add explanation of this to FS. Recommend adding the graphic and/or reference to Appendix B.”**

**Response 15** – The reference to Appendix B has been added.

**Comment 16** – Under Part III.A.2.m related to “SDS”, EPA requests to “**Explain acronym**”.

**Response 16** – Although this is also in the list of abbreviations in Appendix A, the permit condition here refers to Safety Data Sheet.

**Comment 17** – Under Part III.A.3.f related to “Releases in Excess of Reportable Quantities”, the EPA asked a few questions related to the requirements “**What about a written report regarding the release? Is that not required to be submitted to MDE?**” and “**Why was language removed from this section of the previous draft regarding modifying plans in response to a spill?**”

**Response 17** – This section had been updated since the previous version. The links in it were no longer functioning and the language was very different from the rest of the permit, using terms like “the permittee must” instead of the “you must” found in the permit now. When comparing this to the CGP and other MDE permits, it was updated and vastly simplified. Note that these discharges are not authorized under the permit. These are one of the prohibited pollutants referenced in Part I.D.5. The reference to a report has been added, using language directly from the EPA CGP.

**Comment 18** – Under Part III.B.2 “Discharge Limitations for Sites Discharging to Sensitive Waters” which provides “on a case-by-case basis, the Department may notify operators of new sites or operators of existing sites with increased discharges that additional analyses, stormwater controls, or other measures are necessary to comply with the applicable antidegradation requirements, or notify you that an individual permit application is necessary.” EPA asks “**Is this done when the NOI is submitted and reviewed by MDE?**”

**Response 18** – This language is nearly identical to EPA’s CGP. The intent is to allow the Department to contact and require analysis, additional controls or other measures in the future, if they are deemed necessary. More than likely this would happen in the field when an inspector determines additional controls are necessary. However it could also apply to situations where a new design standard is deemed necessary in these watersheds and in this case could be applied either when the NOI is being reviewed or after the fact when the Department becomes aware.

**Comment 19** – Under Part III.C.2 “Frequency of Inspections”, the EPA suggested deleting “**At a minimum**”.

**Response 19** – This language is being retained. Some construction companies perform more frequent inspections, and thus “at a minimum” makes sense.

**Appendix A** – EPA provided no Comments or Edits.

**Appendix B** – MDE reviewed minor edits proposed by EPA and accepted them. Substantive comments were included requiring responses and MDE responses are included below:

**Comment 1** – Question was raised about a sentence related to the “Limits to Disturbance Within the Stream Protection Zone” within the Appendix B. The Sentence “*You are considered to be in compliance with the requirement to provide and maintain a natural buffer if you retain and protect from construction activities the natural buffer that existed prior to the commencement of construction.*” was originally found in the EPA CGP. The question raised by EPA “**Is there a minimum size that this would apply to? What if the existing buffer is only 10 feet? If that is maintained it would be considered to be in compliance with this requirement? I don’t think I fully understand this sentence.**”

**Response 1** – Consistent with EPA’s CGP, if the natural buffer that existed prior to construction was 10 feet, then yes that would apply. The intent of retaining natural buffers is not necessarily to increase it, but to retain them as important protections. **No Change.**

**Comment 2** – Question was raised about a sentence related to the “Guidance for Providing Additional Erosion and Sediment Controls” within the Appendix B. The Sentence “*For example, there may be sites where a significant portion of the property on which the earth-disturbing activities will occur is located within the Stream Protection Zone, thereby precluding the retention of certain natural buffer areas.*” was originally found in the EPA CGP. The question raised by EPA “**This sentence seems contrary to this entire appendix. I thought that permittees were supposed to be discouraged from conducting earth disturbing activities within the buffer area? Should there be a minimum that must be retained if additional E&S controls are allowed in place of a buffer?**”

**Response 2** – Consistent with EPA’s CGP, the permit acknowledges that some work may be required within the Stream Protection Zone. The requirement is to provide additional controls in addition to retaining any natural buffer when construction activities occur within this area. For additional context refer to the EPA CGP and fact sheet. This requirement in MDE’s permit is reflective of that permit. **No Change.**

**Appendix C** – MDE reviewed minor edits proposed by EPA and accepted them. No comments were included requiring responses.